

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

HOLLIE RYAN QUINTANO,

Plaintiff,

vs.

Case No. 2005-2990-DO

JASON QUINTANO,

Defendant.

_____ /

OPINION AND ORDER

Plaintiff has filed a motion for an order to show cause against defendant.

Plaintiff filed her complaint for divorce on May 18, 2005. The parties married September 25, 2004 and had no children in common. Defendant was personally served with the complaint on June 6, 2005; his default was entered on July 25, 2005 for "failure to appear, plead, or otherwise defend." On August 8, 2005, a Judgment of Divorce was granted and it included the terms of the parties' property division. Thereafter, plaintiff brought a motion to compel defendant's compliance with the Judgment of Divorce; the Court entered an Order on January 27, 2006 which directed defendant to provide specific written information to plaintiff pertaining to insurance and that payments were current on cars and a boat awarded to defendant in the Judgment of Divorce; directed defendant to bring current a Best Buy account pertaining to the purchase of a Toshiba DLP television; held defendant in contempt of court for failing to pay the mortgage payments as required by the Judgment of Divorce; and directed defendant to bring current the mortgage payments by February 1, 2006 or pay an attorney fee to plaintiff's counsel.

Plaintiff now brings the present motion claiming defendant has not complied with that



Order. According to plaintiff, defendant has not provided her the information pertaining to the cars and boat nor has he brought current the Best Buy account used for the purchase of the television.

Defendant asserts, in response, that neither he nor his counsel received a copy of the Order entered in January 2006. Defendant further asserts plaintiff has not complied with the relevant court rule for seeking ex parte contempt relief. Defendant also asserts that contempt is not available for his alleged failure to comply with the terms of the Judgment of Divorce insofar as it pertains to the property settlement provisions. In any event, defendant asserts he has sought the protection of the Bankruptcy court regarding the cars, boat, and television so that plaintiff can not pursue collection efforts.

The Court will first consider defendant's claim that he did not receive a copy of the Order with which plaintiff now complains defendant has not complied. Plaintiff filed a proof of service indicating defense counsel was served with a copy of the proposed Order. Defendant's claim that neither he nor counsel was aware of the order is belied by this proof of service and the relevant court rule. This proof of service indicated the proposed order was submitted to the Court under MCR 2.602 and further indicated the proposed order would be entered by the Court unless objections were received within seven days of its submission to the Court. Defendant clearly had notice, then, through counsel, that the proposed order would be entered if he did not submit any objections. He did not submit any objections and the order was then entered by the Court. Defendant and/or his counsel were provided the proposed order and given notice that it would be entered if they did not submit objections. Defendant must have recognized that the proposed order would surely be entered by the Court when he did not submit any objections to it.

In addition, the Court is satisfied plaintiff has complied with the procedures for seeking

an order of contempt. Although MCR 3.606(A) requires an affidavit in support of a motion for an order of contempt, that court rule applies to *ex parte requests* for such relief. In this case, plaintiff, while titling her motion as one seeking *ex parte* relief, provided defendant notice of the motion. As such, plaintiff is not seeking *ex parte* relief under MCR 3.606(A) and her failure to submit affidavits in support is not fatal to her requested relief.

This brings the Court to consider whether the automatic stay which resulted from defendant's Bankruptcy proceedings prevents plaintiff from seeking relief from this Court. The automatic stay provision is set forth at 11 USC § 362 which provides that the filing of a petition "operates as a stay, applicable to all entities, of the commencement or continuation [of an action] or proceeding against the debtor that was or could have been commenced before the commencement of the case under [11 USC § 101 *et seq.*], or to recover a claim against the debtor that arose before the commencement of the case under [11 USC § 101 *et seq.*]." The automatic stay applies to enforcement of judgments, liens, or other attempts to recover a claim against the debtor. *Lopez v Lopez*, 191 Mich App 427, 428; 478 NW2d 706 (1991). Contempt proceedings arising out of disobediences of a state court order made prior to the stay are not subject to the bankruptcy stay. See *In re Dumas*, 19 BR 676, 677-678 (1982) citing *In re Hall*, 170 F 721 (D NY, 1909) and *In re Spagat*, 4 F Supp 926, 927 (D NY, 1933). See also *David v Hooker, Ltd*, 560 F2d 412 (CA 9, 1977). Contra *In re Dervaes*, 81 BR 127 (1987). In this case, plaintiff is now seeking to hold defendant in contempt for failing to comply with the Court's Order issued in January 2006. This Order was issued before defendant sought the protection of the Bankruptcy court. Thus, plaintiff's action is not precluded by the automatic stay of the Bankruptcy petition.

Finally, although plaintiff's request for relief is not precluded by the automatic stay, the Court must still consider whether contempt is an appropriate vehicle for providing plaintiff the

relief which she seeks. Here, plaintiff is seeking to use contempt to compel defendant to comply with the terms of the parties' property settlement. However, the property settlement provisions of a decree of divorce may not be enforced by contempt proceedings. *Thomas v Thomas*, 337 Mich 510, 513-514; 60 NW2d 331 (1953); *Chisnell v Chisnell*, 99 Mich App 311, 320; 297 NW2d 909 (1980). Thus, even though the automatic stay does not preclude this Court from acting, because plaintiff is seeking to enforce the terms of the property settlement, contempt is not available.

Therefore, for the reasons set forth above, plaintiff's motion for an order to show cause against defendant is DENIED.

IT IS SO ORDERED.

MARK S. SWITALSKI

Mark S. Switalski, Circuit Judge

Dated: June 6, 2006

MSS/vs

CC: Keith M. Nathanson, Attorney at Law
Dennis L. Brewer, Attorney at Law

A TRUE COPY
Carmella
BY [Signature]
JUN 10 2006